

HOUSE BILL No. 1104

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-13; IC 5-8-5; IC 36-5-2-6.5.

Synopsis: Town council vacancy. Specifies when a vacancy occurs on a town council. Allows the town council to determine whether a vacancy exists on the council.

Effective: July 1, 2002.

**Ayres, Stevenson, Adams T,
Saunders**

January 8, 2002, read first time and referred to Committee on Local Government.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1104

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-13-9-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) A vacancy in the town
3 council:
4 (1) not covered by section 1 of this chapter; or
5 (2) covered by section 1 of this chapter, but existing after the
6 thirtieth day after the vacancy occurs;
7 shall be filled by the remaining members of the council at a regular or
8 special meeting.
9 (b) The town clerk-treasurer shall give notice of the meeting. ~~which~~
10 **Except as provided in subsection (d) or (e), the meeting** shall be
11 held:
12 (1) within thirty (30) days after the vacancy occurs if the vacancy
13 is not covered by section 1 of this chapter; or
14 (2) within sixty (60) days after the vacancy occurs if the vacancy
15 **is covered by section 1 of this chapter and** exists for more than
16 thirty (30) days.
17 (c) The notice must:



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- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) Notwithstanding subsection (b), if a vacancy:

- (1) is not covered by section 1 of this chapter; and**
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6);**

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6).

(e) Notwithstanding subsection (b), if a vacancy:

- (1) is covered by section 1 of this chapter;**
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6); and**
- (3) exists for more than thirty (30) days;**

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6).

SECTION 2. IC 3-13-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as provided in subsection (b) **and section 3.5 of this chapter**, not later than ten (10) days after a vacancy occurs in an office subject to this chapter, the county chairman:

- (1) of the county in which the greatest percentage of the population of the election district of the office is located; and
- (2) of the same political party that elected or selected the official who vacated the office;

shall give notice of a caucus to all eligible precinct committeemen.

(b) A county chairman may give notice of a caucus before the time specified under subsection (a) if a vacancy will exist because the official has:

- (1) submitted a written resignation under IC 5-8-3.5; or
- (2) been elected to another office.

(c) Notwithstanding IC 5-8-4, a person may not withdraw the person's resignation after the resignation has been accepted by the person authorized to accept the resignation less than seventy-two (72) hours before the announced starting time of a caucus under this section.

(d) Except as provided in section 3.5 of this chapter, a caucus

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under this section shall be held after giving notice to caucus members under section 4 of this chapter and not later than thirty (30) days after the vacancy occurs.

SECTION 3. IC 3-13-11-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 3.5. (a) If a vacancy exists on a town council because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6), the caucus shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county chairman receives a notice of the vacancy under IC 5-8-5. If the vacancy is due to the death of a town council member, and the county chairman is aware of the member's death before receiving a notice of the death, the caucus may meet before the county chairman receives the notice of the death.**

(b) The county chairman shall:

- (1) give notice of the caucus meeting to caucus members under section 4 of this chapter; and**
- (2) keep the notice of the vacancy with the records of the caucus.**

SECTION 4. IC 5-8-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 5. Notice of a Town Council Vacancy

Sec. 1. This chapter applies when a vacancy must be filled under:

- (1) IC 3-13-9; or**
- (2) IC 3-13-11;**

due to a reason set forth in IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6).

Sec. 2. As used in this chapter, "member" refers to a town council member.

Sec. 3. (a) The town council may hold a public meeting to determine whether a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6) that results in a vacancy on the town council. The town council may set a meeting for making the determination on its own motion, or a person may petition the town council to set a meeting to make the determination. The town council may grant or deny a petition for a meeting.

(b) If a person files a petition with the council, the petition must state the basis for the person's claim that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(6).

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1 **Sec. 4. (a) If the town council is reasonably satisfied that any**
 2 **circumstance has occurred under IC 36-5-2-6.5(2) through**
 3 **IC 36-5-2-6.5(6), the council may, by an affirmative vote of a**
 4 **majority of the members appointed to the body, vote to declare a**
 5 **vacancy in the town council membership. The member who is**
 6 **alleged to have vacated the member's seat may participate in the**
 7 **meeting as a member, but may not vote on the issue.**

8 **(b) If the member who is the subject of the petition or motion**
 9 **does not attend the meeting at which the town council makes the**
 10 **determination that a vacancy exists, the town council shall mail**
 11 **notice of its determination to the member.**

12 **(c) If the town council determines that a vacancy exists, the town**
 13 **clerk-treasurer shall give the circuit court clerk notice of the**
 14 **determination not later than five (5) days after the date of the town**
 15 **council's determination. The circuit court clerk shall give notice to**
 16 **the county chairman if a caucus is required under IC 3-13-11 to fill**
 17 **the vacancy.**

18 **Sec. 5. The member whose seat is vacated may file an action**
 19 **under IC 34-17-1 with the circuit court of the county where the**
 20 **town is located.**

21 **SECTION 5. IC 36-5-2-6.5 IS ADDED TO THE INDIANA CODE**
 22 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 23 **1, 2002]: Sec. 6.5. A vacancy on the legislative body is created**
 24 **whenever any of the following circumstances occur:**

25 **(1) A member resigns.**

26 **(2) A member dies.**

27 **(3) A member fails to attend at least six (6) consecutive**
 28 **regularly scheduled meetings of the governing body in any**
 29 **twelve (12) month period for a reason other than an illness**
 30 **certified by a physician.**

31 **(4) A member ceases to be a resident of the town or district as**
 32 **set forth in section 6 of this chapter.**

33 **(5) A member fails to comply with any statutory or**
 34 **constitutional requirements of office.**

35 **(6) Any other circumstance provided by law that creates a**
 36 **vacancy.**

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